

ATTACHMENT 5

APPROVED PLANNING COMMISSION MINUTES OF 02/23/04

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2002-0929 – Application for related proposals on a 5,250 square foot site located at **1090 Essex Avenue** in an R-0 (Low-Density Residential) Zoning District. (APN: 110-11-016) RK

- **Variance** from SMC (Sunnyvale Municipal Code) section 19.34.030 to allow a combined first story side yard setback of 10'6" where 12' is required and from SMC section 19.34.080 to allow a combined two-story setback of 12' where 18' is required, and
- **Design Review** to allow a new two-story home for a total of 3,424 square feet resulting in 62% FAR (Floor Area Ratio) where 45% is allowed without Planning Commission Review.

Ryan Kuchenig, Project Planner, presented the staff report. He summarized the proposed application highlighting the use, site layout, architecture and deviations from the code. He corrected the description of the application that the total Floor Area Ratio is 62% and not 65%. Also he noted that there is a discrepancy in the information on the front page of the staff report and that the data project data table is accurate. Staff reported that the application meets most standard development requirements with the exception of lot size and side yard setbacks. Staff made recommendation that the floor area ratio be reduced to 56% FAR by reducing the proposed first-story extension, modify the second floor hallway and reduce the area of the master bedroom. Staff was able to make the required Findings and recommended approval of the Variance and Design Review subject to the Conditions of Approval.

Vice Chair Moylan commented that the application appears analogous to a project that was approved on San Pablo Avenue where the footprint was already a deviation and the applicant wants to extend the deviation and staff recommended denial of the Variance. This particular application, the combined setback is already a deviation and the applicant wants to extend the deviation. He felt that the only unusual aspect of the property is that the lot is sub-standard. He was unable to determine how staff was able to make the required Findings #1 and #3. Staff responded that granting the Variance is warranted because of the sub-standard nature and characteristic of the lot, no further encroachment was requested; that the minimum side yard requirement was met and that the character of the adjacent lots were also considered.

Vice Chair Moylan further asked why is the property special to grant the Variance and why is this application not analogous to the San Pablo property. Ms. Ryan responded that she could not recall the details of the application on San Pablo Avenue. However, she recalled a variance for lot coverage which is different as it is proportional to the lot while setback is a more static measurement. As such, the lot is of reasonable size to allow a reasonable amount of development to occur. She stated that the application still meets other requirements such as lot coverage and minimum setback

requirements. Staff also suggested that the total side yard setback is a hardship because of the width of the property, where as the coverage, regardless of the zoning district, has the same lot coverage.

Vice Chair Moylan confirmed with staff that for substandard lots the setback requirements are hardship and further asked how Findings #3 is met. Ms. Ryan responded that the hardship is although the lot size is not unique, homes in the area have previously been permitted to expand homes along non-conforming lines.

Further, Vice Chair Moylan commented that in a sense, the setback requirements had not been applied in the neighborhood therefore granting the Variance does not grant the applicant a special privilege. Ms. Ryan stated that the lot is substandard for the current zoning regulations and noted that the interpretation of the ordinance was different until about two years ago.

Vice Chair Moylan asked if it would be more appropriate to review the application designed at 56% as recommended by staff rather than review the application which was designed at 62%. Ms. Ryan responded that generally the architectural features would be similar. However, if the Commission feels that it is something that should come back, then the Commission could take this action.

Chair Babcock opened the public hearing.

George Sarkissian, applicant, provided the evolution of the project and because of necessity, his needs to expand his house. He stated that he has been working with staff to get approval for his remodel. He cited some examples of development in the City where the setback deviations and FARs are larger than what he is requesting. He felt that his application should be treated similarly to those recently approved projects. He stated that the application meets all the setback requirements with the exception of the chimney where deviation is needed for safety and aesthetic reasons. He urged the Commission to approve the Variance and Design Review.

Chair Babcock closed the public hearing.

Comm. Hungerford made a motion on Item #2002-0929 to approve the Variance and Design Review with the recommended Conditions of Approval. Comm. Simons seconded.

Comm. Hungerford commented that his biggest issue is that the proposed design is to mirror the nonconforming foot print. However, he agreed with staff that reducing the FAR by shrinking the size of the second-story and as conditioned, the application meets the requirement for both the Design Review and Variance.

Comm. Simons commented that the reduction of the total FAR is a compromise to meet the requirements.

Vice Chair Moylan was unable to make the required Findings for either the Variance or Design Review. He felt that granting the Variance, it is concluded that side yard setbacks requirements on sub-standards lots are a hardship on everyone, then the ordinance is declared null and void in this particular neighborhood. He stated that side yard setback is one of the most important requirements. He added that he is uncomfortable approving the project designed at 62% and not at 56%. He preferred reviewing the design at 56% FAR.

Chair Babcock asked staff whether it is necessary to add in the motion that "front yard fence will not be higher than six feet" or rather "no fence higher than three feet in height." Ms. Ryan responded that it could be included, however, cautioned the Commission not state "no six-foot front yard fence allowed" because the regulation might change sometime in the future.

Comm. Klein made a friendly amendment to reduce the FAR from 62% to 56% FAR and include the required side yard setback of the first and second story. Ms. Ryan noted that this amendment is addressed in Condition of Approval #5 which requires that the new design meets the total side yard setback for the second story in meeting with the required 56% FAR.

Comm. Klein withdrew his friendly amendment.

Chair Babcock offered a friendly amendment to add a Condition of Approval "that the front yard fence shall not be over three feet in height". Accepted by the maker and the second.

Final Motion:

Comm. Hungerford made a motion on Item #2002-0929 to approve the Variance and Design Review subject to Conditions of Approval with modifications that the front yard fence shall not exceed three feet in height. Comm. Simons seconded.

Motion carried 5-2 with Vice Chair Moylan and Comm. Sulser dissenting.

Ms. Ryan stated that the decision is final unless appealed to City Council within the 15-day appeal period.